

DELIVERABLE 8. *Eliminating Barriers: Police and Judicial Procedures for Victims With Intellectual Disabilities.*

I. INTRODUCTION

It has been only in recent years that researchers throughout Europe have begun calling attention to the vulnerability of persons with disability—persons with intellectual disability, in particular (Recio, Alemany, Manzanero, 2012; Fyson and Cromby, 2010; Sullivan and Knutson, 2000; Westcott and Jones, 1999), who are up to 10 times more likely to be the victim of a crime than persons without intellectual disability (Brown, Stein, and Turk, 1995; Horner-Johnson and Drum, 2006; McCarthy and Thompson, 1997; Sobsey, 1994; Verdugo, Alcedo, Bermejo, and Aguado, 2002). There are various reasons that persons with intellectual disability are more likely to be the victim of a crime: a) most of them are in a dependent relationship; b) they live in a world of little intimacy because of their need for care; c) they lack social skills; d) they are ignorant of their rights; and e) many of them have poor communication skills (Cambridge and Carnaby, 2000; Knutson and Sullivan, 1993; Sobsey and Varnhagen, 1991; Tharinger, Horton, and Millea, 1990; Verdugo et al., 2002).

Evidence of their vulnerability to crimes has spurred professionals working with persons with intellectual disability to activate an array of preventive measures, such as sex education and social skills programs; protocols for detection and intervention when there is suspicion of abuse, mistreatment, or negligence; and campaigns to raise awareness of the need to modify criminal procedures. The United Nations adopted a Convention on the Rights of Persons With Disabilities but, in Spain, changes in criminal and procedural law have not been accompanied by changes in procedure that are in procedure in keeping with the commitments of that Convention.

In many cases, as a victim of some type of abuse, persons with intellectual disability do not come to the attention of protective services. This is because, normally, specialized services and law enforcement agencies become aware of an alleged crime only through a third party to whom it is first disclosed (usually a family member or professional close to the victim). Unfortunately, there are still many cases where the decision is made not to report these disclosures—even when they are thought to be true—precisely because of the system's inability to accommodate that complaint properly and implement the support systems necessary for the process. Moreover, owing to a lack of information, the absence of campaigns to raise public awareness, and insufficient resources for integrating persons with intellectual disability into society, among other factors, the

majority of the population knows nothing of their reality, and attitudes toward them are rooted in myths and false beliefs.

When this ignorance extends into the law enforcement and judicial sectors, it becomes a major issue, in that agents in these systems lack the training that would enable them to modify their procedures for persons with intellectual disability. Besides the physical, economic, psychological, and social harm that comes to victims of a criminal act, they usually suffer severe emotional repercussions, as well, and this can be exacerbated by their initial contact with the criminal justice system, with which they usually are not familiar. Rarely is this system explained to victims with intellectual disability, nor are they even asked, usually, whether they want to get involved with it.

Furthermore, when a person with intellectual disability has been the victim of a crime and has filed a complaint, it is the system's inability to accommodate these individuals that makes them tremendously vulnerable to revictimization phenomena. Two factors that contribute to revictimization are worth mentioning because of their far-reaching implications: the poorly adapted law enforcement and judicial documents, procedures, and interviewing techniques; and the lower level of credibility often ascribed to the testimony of these victims, especially when they have an intellectual disability or suffer from a mental illness.

For all the above reasons, it is vitally important that the necessary adaptations be made as soon as possible so that persons with disability and, in particular, those most vulnerable—those with intellectual disability—would have equal access to justice. This would mean enhancing the system's ability to provide the necessary adaptations and supports—a process that must begin with viewing them as extremely vulnerable individuals.

This report is the result of analyzing 29 cases of persons with intellectual disability who were victims of some type of mistreatment or abuse and who, after filing a complaint, were processed through the criminal justice system—not always with all the recommended supports. The research analyzes the experiences of these alleged victims of crime to determine the source and scope of the primary obstacles blocking their access to proper and effective protection under the law. Based on the report's conclusions, the authors formulate a number of recommendations for civil authorities.

II. METHODOLOGY

Qualitative case study was the methodology used for this project, the objective of which was to analyze the procedures followed during the processing of cases being assisted by the Victims With Intellectual Disability Support Unit (2011-2014). For this

purpose, any irregularities or interventions in law enforcement and judicial procedures that could potentially be improved through an updating of current legislation were documented, from the moment the event occurred until the judicial proceedings ended.

a. Selection of cases to document

The research team selected 29 cases from among the more than 240 cases handled by the Victims With Intellectual Disability Support Unit between January of 2011 and December of 2014. Selections were made without regard to the final outcome of the Unit's intervention, whether positive or negative, and were based on several criteria.

- First of all, it was essential for the case to have progressed as far as possible (completed and discharged cases were preferred). This was the most important criterion, since these cases would provide information about the law enforcement and judicial barriers encountered over the course of the entire process. (It is important to bear in mind that it takes 2-3 years, typically, for a case to be discharged.)

- Cases were also selected for their value as examples from which we might learn. To this end, the study presents not only cases that were processed properly (with all the supports the victim needed) but also those where mistakes were made or the victim had to face many obstacles. Thus, we can be guided by those cases that were processed with the highest possible standard of care, and we can try to improve upon those aspects of the intervention that were not handled in the most appropriate manner.

- Among the 29 cases selected, we found both adults and minors, of both sexes, and from different parts of Spain who had been victims of various types of abuse or mistreatment suffered at the hand of a relative or someone outside the family circle. The one characteristic they all had in common, which was a requirement to be included in this research, was intellectual disability plus the presence of a strong evidence base, both physical and psychological, that the plaintiffs and/or injured parties had actually been victims of these assaults.

b. Design of the questionnaire

The questionnaire created by the research team was designed to detect all possible barriers and supports during the entire law enforcement and judicial process, in as much detail as possible, using questions tailored for each phase of the case—from the disclosure, to the complaint filed with the police and the subsequent investigation, the pre-trial phase and the trial, and finally the judge's ruling.

The initial questionnaire had several sections. The first was for gathering the victim's personal information and history and the facts of the case (type of crime, victim's age, type of disability, victim's relationship with the accused, and whether the victim was

legally incapacitated); the second was about the disclosure of the abuse or mistreatment and the complaint filed; and there were three more sections, one for each phase of the judicial process itself.

The questions about the disclosure and the complaint were aimed at gathering information about the context in which the abuse was disclosed (who the victim first told, what type of questions were asked and how many times, and how much time passed until the complaint was filed), and about how and when the complaint was filed (who conducted the interview at the police station and how it was conducted, and what questions the victim was asked).

In the pre-trial section, the questions were focused on finding out whether the pre-trial phase was adapted to the victim's ability (how long it took for the summons to be issued, what information the victim was given about the process, whether expert assistance was available to the victim during the statement, where the statement was taken, whether an audiovisual recording was made of the statement being taken, and what type of questions the victim was asked). The trial section had the same questions as the preceding section, but they were adapted for this phase of the procedure (for example, whether the victim had been shielded from eye contact with the accused).

The last section of the questionnaire dealt with the ruling and gathered information such as whether there were prejudices toward the disability that could have influenced the outcome of the procedure, and whether the ruling was drafted in language adapted for the capabilities and comprehension of a victim with intellectual disability.

c. Participant observation of the Unit's cases

As previously mentioned, the aim was to complete the questionnaires using cases that had progressed farthest in the judicial procedure, for they would have covered more of its phases and, therefore, would provide more information. Although many of these cases came to the Victims With Intellectual Disability Support Unit after the process had begun, we also found ourselves with some cases of individuals who, following an abuse situation, had contacted the Unit directly. This facilitated an objective analysis of the judicial procedure because, to document these cases, there was almost no need to collect information from outside sources, which carries the risk of information being contaminated and a many important details being missing.

For cases that were handled by the Unit from the outset, observations were direct and ongoing because the Unit offered victims the option to be accompanied when they filed the complaint. Thus, the psychology specialist who went with the victim had first-hand knowledge of how the victim was treated by law enforcement agents, as well as any

adaptations that were made when the statement was taken. Moreover, the Victims With Intellectual Disability Support Unit makes an audiovisual recording of both the skills assessment interview and the victim's testimony, which means that we had a great deal of information at hand for filling out the questionnaires, with no need to turn to outside sources. This recording may also be used as preconstituted evidence in later phases of the judicial process, if the court accepts it, and could also be taken into account for the forensic report and the skills assessment report for the purpose of evaluating the case.

These victims were also represented by the Unit's legal team; so, for almost all the procedures analyzed in this research, we had attorneys who were fully conversant with their cases as well as direct, in-person involvement in each and every judicial intervention. Besides receiving notifications from the courts, the attorneys asked the court to adopt special measures and supports for the victims, so they were able to directly observe the court officials' response.

In summary, even though the study questionnaires were completed, in part, by collecting information from outside sources, thanks to the Unit professionals' day-by-day involvement and observations, we were able to analyze cases from the moment the abuse was disclosed—because they were handled by the Unit from the outset—and to include them in this research.

d. Delphi Groups

In addition to all of the above, a series of sessions with a group of experts—attorneys, district attorneys, judges, therapists expert in intellectual disability, police officers, forensic psychologists, and victims with intellectual disability who had been involved in some judicial procedure, along with their families—were arranged and conducted with the objective of finalizing all the information supplied by the questionnaires for the 29 cases.

III. RESEARCH RESULTS

In keeping with the structure of the questionnaire designed for collecting data on the 29 cases, the results are divided into four sections: barriers encountered in filing the complaint, barriers found during the pre-trial phase, barriers during the trial, and barriers related to the ruling.

a. Complaint

The point of departure for all 29 cases was that the complaint had been filed soon after the abuse or mistreatment came to light; either the person with intellectual disability who had suffered it disclosed it by direct verbalization, or there was strong suspicion when the victim presented with “symptomatology” of abuse and it was associated with a specific individual. In the majority of cases, however, the decision to file a complaint was made by someone other than the victims themselves, as reflected in the following graphic (Figure 1):

¿Participó la víctima en la decisión de denunciar?

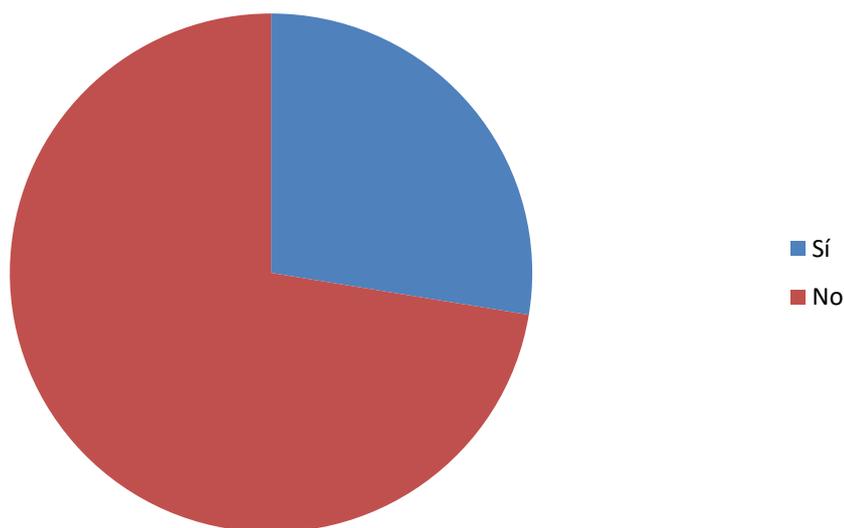


Figure 1

The above graphic reveals that, of the 29 cases analyzed, only 8 victims (27.6%) participated, more or less, in the decision to file a complaint, while the other 21 were not involved in any way in this decision; it was their relatives or professionals close to them who pushed for taking this route.

As a related issue, we also analyzed whether the victim was given an explanation of the complaint's content and the consequences of filing it—in particular, the journey victims would have to take after filing the complaint and their role in the process. As shown in Figure 2, in 17 of the 29 cases, victims did receive this explanation; in 2 cases, however, it was not given until after the complaint had been filed. In contrast, 12 of the victims (41.4%) were given no information about the process, either before or after the complaint was drafted.

¿Se le explica a la víctima el proceso policial y judicial?

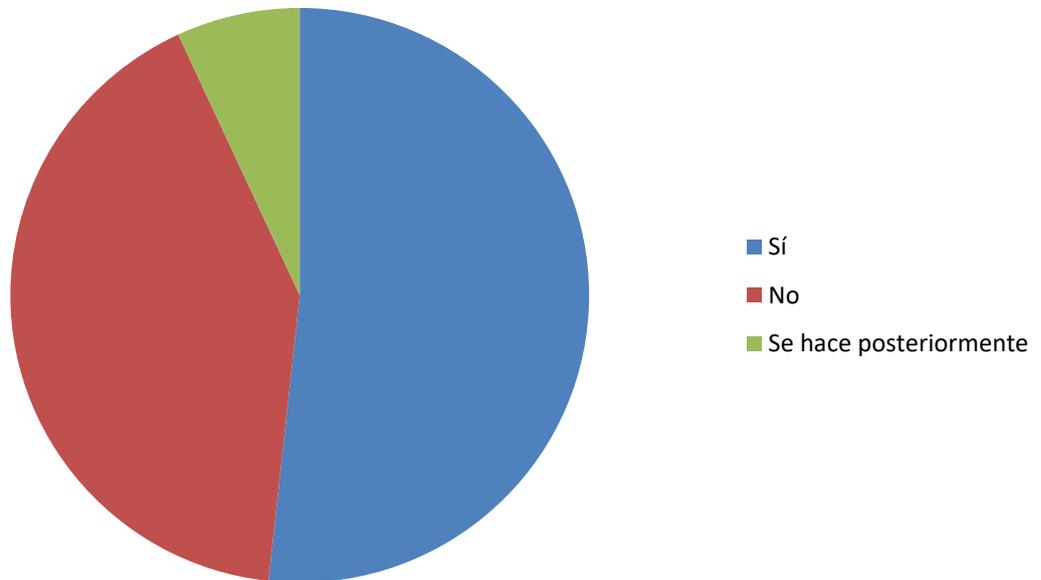


Figure 2

We also analyzed the number of individuals (relatives and/or professionals) who, prior to the complaint being filed, had questioned the victim with intellectual disability about what happened. The results for this were highly variable, as reflected in Figure 3 and explained below:

Antes de denunciar, ¿cuántas personas interrogaron a la víctima?

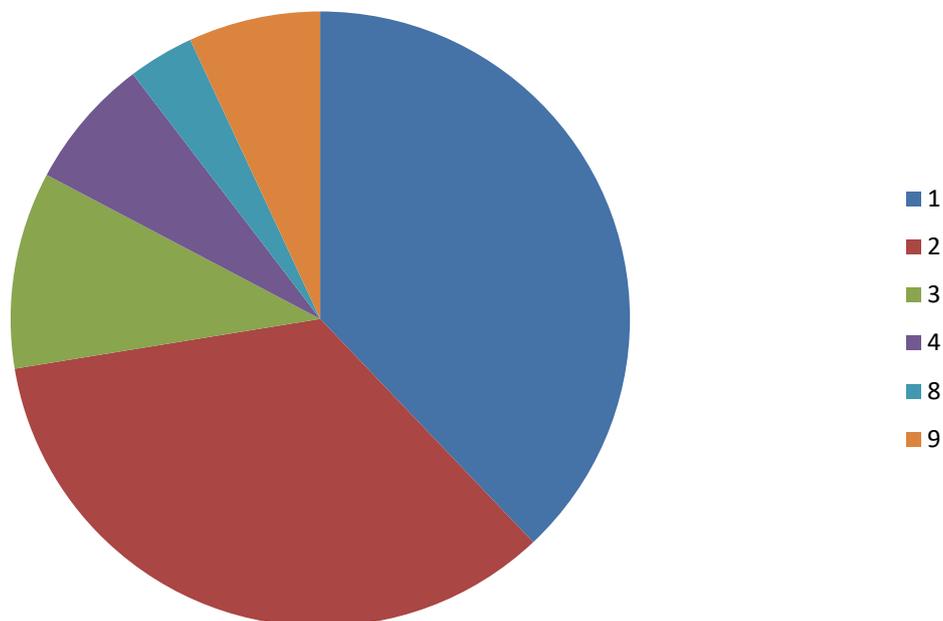


Figure 3

As may be appreciated from this graphic, in 21 of the 29 cases (72.4%) there were “few” individuals—understood to be no more than two—who, prior to the complaint being filed, questioned the victim about the event (only 1 individual in 11 cases, and 2 individuals in the other 10 cases). In 8 cases, however, the victim had to relate the facts of the abuse or mistreatment to more than two individuals, distributed as follows: to 3 individuals in 3 cases (10.3%); to 4 individuals in 2 cases (6.9%); to 8 individuals in 1 case (3.4%); and to as many as 9 individuals in 2 instances (6.9%).

The period of time between the disclosure and the complaint being filed is an key factor in terms of protection for victims and the quality of their testimony. Analysis of the questionnaires yielded uneven results for this factor, also. We found that, after the facts were known, it took less than one week to file the complaint in 55.1% of the cases; in the remaining 44.9%, however, it took one week or more. For the 29 cases analyzed, there was a mean delay of 21.45 days from the time the events were known until a complaint was filed. (An important consideration is that, in 24% of cases, it took one month or more to file the complaint.)

We also looked into the number of cases in which, prior to the complaint, an assessment was done of the skills that affect the testimony of a victim with intellectual disability. Although this assessment was done in 17 of the 29 cases, in only 11 cases (37.9%) was it done before the complaint was filed. In the other 12 cases, or 41.4% of the total, this assessment was not done at any time (see Figure 4).

¿Se realizó una entrevista de evaluación de capacidades o se recogió información sobre ellas?

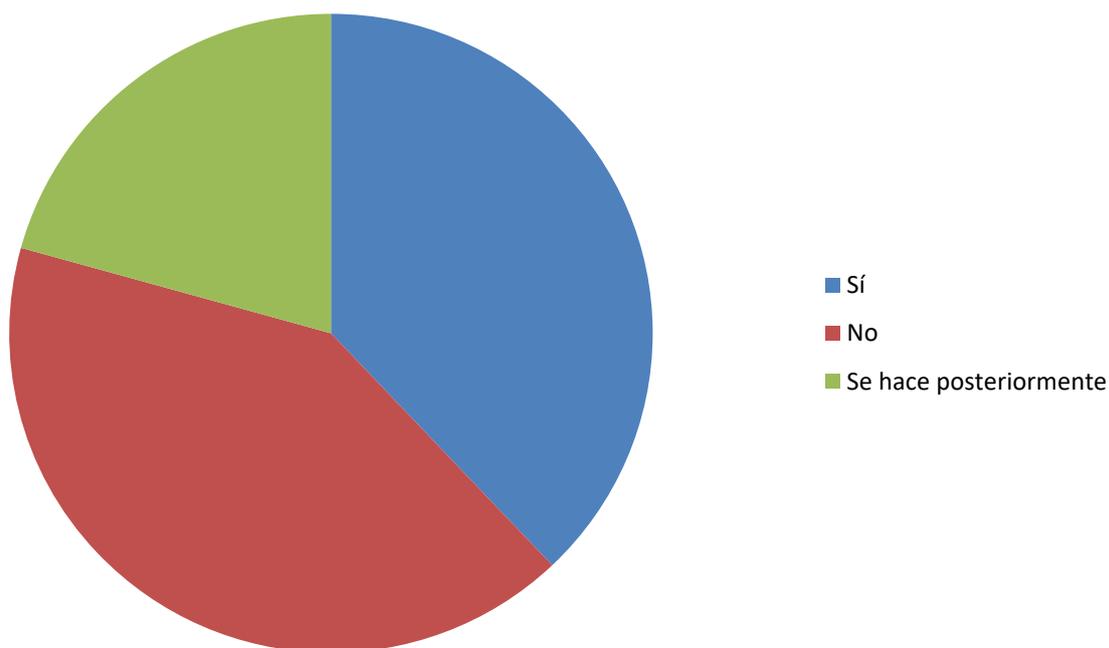


Figure 4

To finish with this phase of the process, two factors related to the act of filing the complaint were analyzed: whether a professional / expert was present to assist the victim with filing the complaint, and whether the questions asked by the officials who drafted the statement were adapted to the victim's abilities (clear questions, simple structure, etc.).

Results of the analysis for the first of these variables, displayed in Figure 5, show that, in 7 cases, a professional or expert did assist victims with giving their statement, while in 16 cases (55.2%), no professional or expert was present, and victims had to give the statement by themselves when filing the complaint. In the remaining 6 cases, no professional / expert assistance was necessary because the victim was not required to be present when the complaint was filed; this was because the plaintiff was a relative, a

witness, or an employee of the center where the person with intellectual disability went for assistance.

¿Algún profesional asistió a la víctima en el momento de la denuncia?

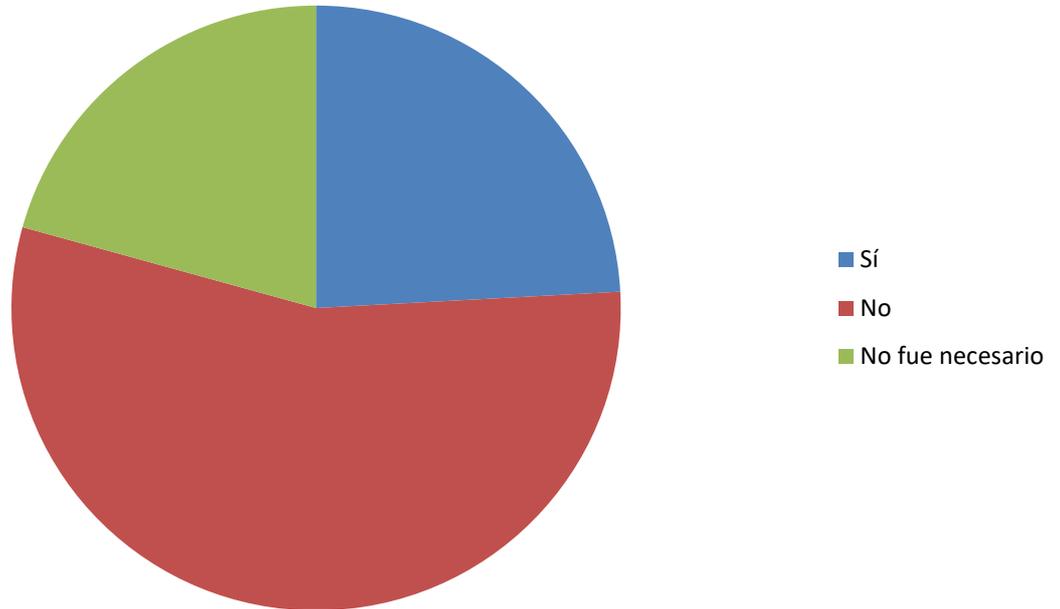


Figure 5

As for the type of questions the victim was asked, in 12 cases (41.4%), the questions had been adapted to the victim's level of comprehension and communication skills, while in 11 cases (37.9%) they had not been adapted. The remaining 6 cases did not figure in this analysis, for reasons explained in the previous paragraph: the victim did not have to be present when the complaint was filed because the plaintiff was a relative, a witness, or an employee of the center where the person with intellectual disability went for assistance. Thus, there was no need to adapt the communications.

b. Pre-trial phase

Once the complaint has been filed and the pre-trial phase has begun, victims have just started to play their role in the procedure. So, the first analysis of significance would be whether victims had been given an explanation of the procedure—specifically, the fact that they would be called to make a statement, what their role would be, what individuals would be there, where the court appearance would take place, etc. In this

scenario, unlike in the previous phase (filing the complaint), there were as many as 19 cases (65.5%) where victims were given this explanation, compared with 10 cases where, even having reached this point, they had not been informed of the substance or the implications of this phase, nor of their role in it.

Another interesting piece of information to be evaluated was whether the victim's legal defense had sufficient awareness of the implications of intellectual disability to be able to act accordingly in the legal-procedural sphere. According to the results, there were 21 cases where the attorney was aware of the significance and consequences of this condition; 7 cases where the attorney claiming to represent the individual with this condition was not knowledgeable of its implications; and 1 case where the victim was unable to designate an attorney because he/she was legally incompetent, and a guardian for the victim had not yet been named. These results are shown in Figure 6 below:

¿La defensa legal de la víctima conoce lo que es la discapacidad intelectual?

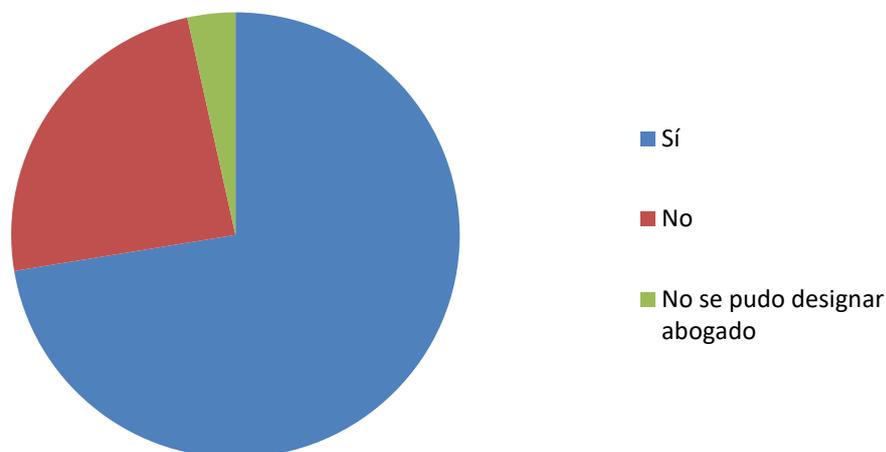


Figure 6

All manner of results were obtained from analysis of the time elapsed between the claim being filed and the date the victim was subpoenaed to give a statement before the pre-trial judge. The most significant results were the mean number of days (78.75 days) and the classification, shown in Figure 7:

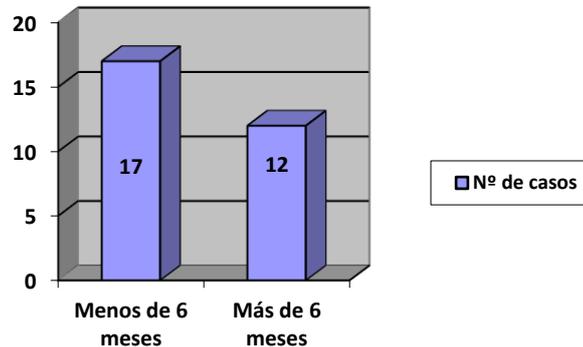


Figure 7

Certain elements of the court appearance, where the victim gives his/her statement, are considered significant because of how they might impact the quality of the victim's testimony and his/her right of access to justice. The following elements of the court appearance were analyzed: location of the court where the appearance took place and the individuals present; the assistance of professionals / experts when the statement was taken; how the questions were asked (adapted / not adapted); and whether preconstitution of the evidence was requested and allowed.

As for the first variable, in as many as 17 cases (58.62%), the statement was taken in the courtroom, in the presence of and through interactions with the Pre-trial Judge, the District Attorney's Office, and Counsel for the parties; in 5 instances, it was conducted in the same manner but in the judge's chambers instead of the courtroom; in 4 instances, it took place in the Clerk of Courts office; and in only 3 of the 29 cases (10.34%) was the statement of the victim with intellectual disability taken via videoconference from an office or adjoining room, with the other parties viewing it live in the courtroom.

Results of the analysis for the second of these variables, displayed in Figure 8, show that, in 12 cases, a professional or expert did assist victims with giving their statement, while in 17 cases (58.62%), there was no professional or expert present, and victims had to appear in court and give the statement by themselves. In 9 of the 12 cases where victims did have the assistance of a professional, that person was permitted only to play the role of escort and emotional support person and to intervene at certain points to facilitate communication between the parties and the deponent; in the other 3 cases, the professional was authorized to conduct the interview or to reformulate the questions asked by the parties so as to adapt them to the victim's level of comprehension.

¿Asistió a la víctima algún profesional/experto durante la comparecencia?

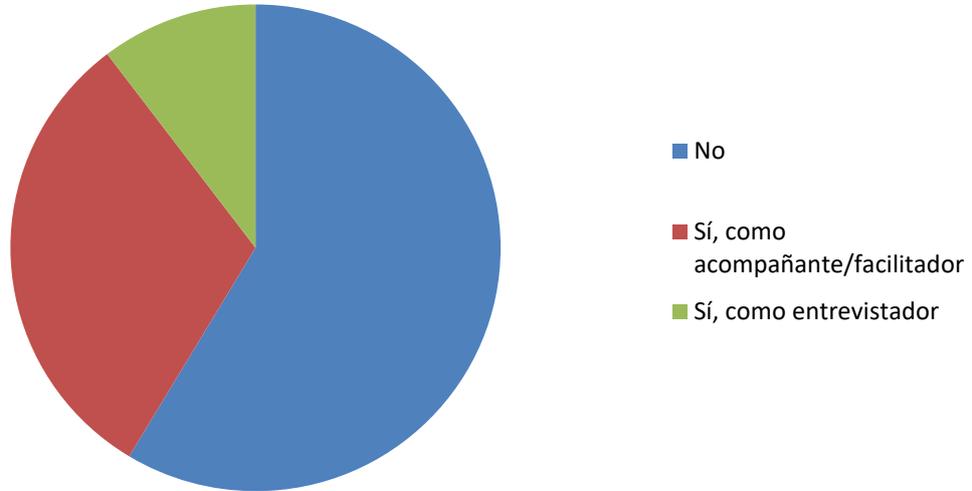


Figure 8

As for the type of questions the victim was asked, in 20 cases (68.97%), the questions had been adapted to the victim's level of comprehension and communication skills, while in 6 cases (20.69%), they had not been adapted. The remaining 3 cases did not figure in this analysis, for reasons explained in the previous paragraph, since an expert professional was authorized to ask the questions or to reformulate questions asked by the parties so that they were adapted to the victim's level of comprehension.

Lastly, regarding the statement given by the victim with intellectual disability in the pre-trial phase, we analyzed whether preconstitution of the evidence was requested and, if so, whether the judge allowed this procedure. The results are shown in Figure 9:

Prueba preconstituida

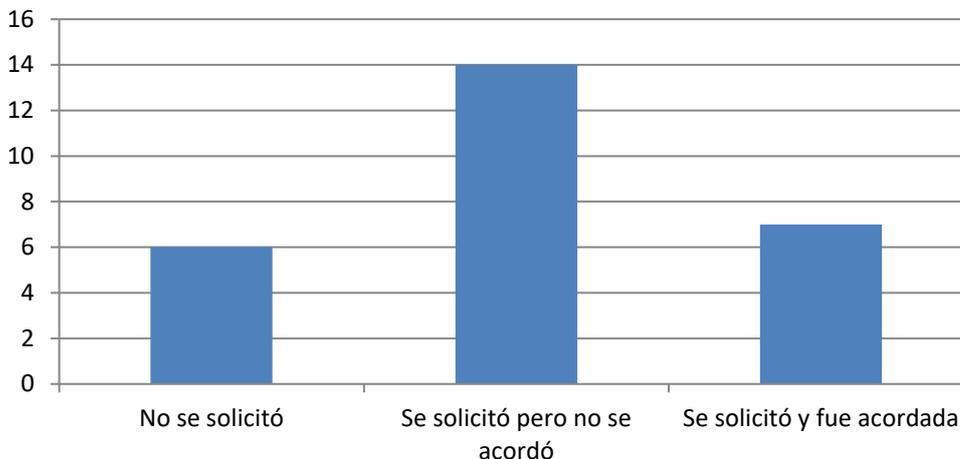


Figure 9

As shown in the graphic, in 6 instances (20.69%), preconstitution of the victim's statement was not requested. Of the remaining 23 cases, in which an audiovisual recording of the statement was requested, the Pre-trial Judge allowed it in 7 cases (or 24.14% of the total) but barred it in 14 cases (48.27% of the total).

To finish this section on the pre-trial phase, we analyzed how and how often the pre-trial judge ordered the court's forensic psychologist, psychosocial team, or forensic medicine team to complete a credibility assessment on the victim with intellectual disability. For this they used a procedure called CBCA (Criteria-Based Content Analysis), which is a forensic tool used in the context of SVA (Statement Validity Assessment). Its purpose is to determine whether the quality and specific content of a testimony are indicative of a narration originating in the individual's memory or one that is the product of invention, fantasy, or another person's influence. The primary problem with using this instrument is that it was designed for a particular group of victims: children (without intellectual disability) who have been sexually abused. In recent years, however, there has been growing interest in a more widespread application of this tool with other groups, including victims with intellectual disability. This may lead to—and indeed does lead to—a negative outcome in a judicial investigation involving a person with intellectual disability. Results of the analysis for this variable showed that, in as many as 16 (55.17%) of the 29 cases analyzed, the CBCA was used to assess the credibility of a victim with intellectual disability; in the other 13 cases, either this technique was not used or the pre-trial judge did not request this assessment.

c. Trial

Before beginning to analyze the data for this phase of the procedure, we should clarify that not all cases reached this phase—some because they were dismissed, others because they were still in pre-trial. Thus, it would be appropriate, first of all, to describe what phase of the process the cases were in when this report was written (see Figure 10):

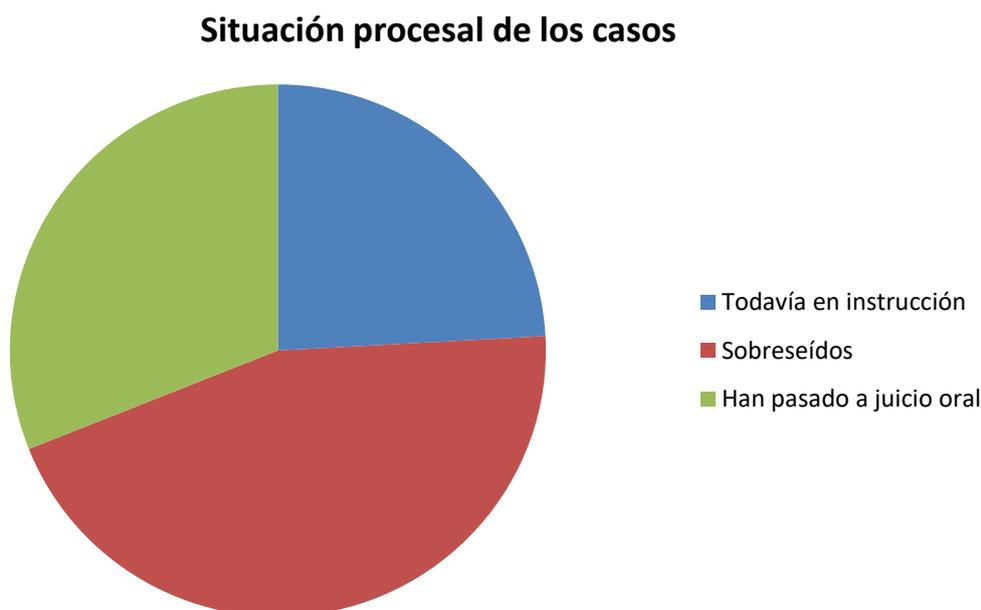


Figure 10

As may be noted, of the 29 cases examined, only 9 (31.03%) had gone to trial. Of the other 20 cases, 7 were still in the pre-trial phase, while 13 had been closed, which was 44.83% of the total cases analyzed.

It was interesting, at this point, to consider whether the use of supports might have been a variable in this data. Did the introduction of one or more supports that would have compensated for the limitations of the victim with intellectual disability—expert assistance, clear and simple questions, the location where the appearances were held, preliminary explanation, no CBCA, etc.—make a difference in how far the case had progressed? The results of this consideration—which are subject to the corresponding evaluation and interpretation of this analysis to be presented in the Conclusions section—are shown in the graphic below (Figure 11):

Situación procesal de los casos con y sin apoyos

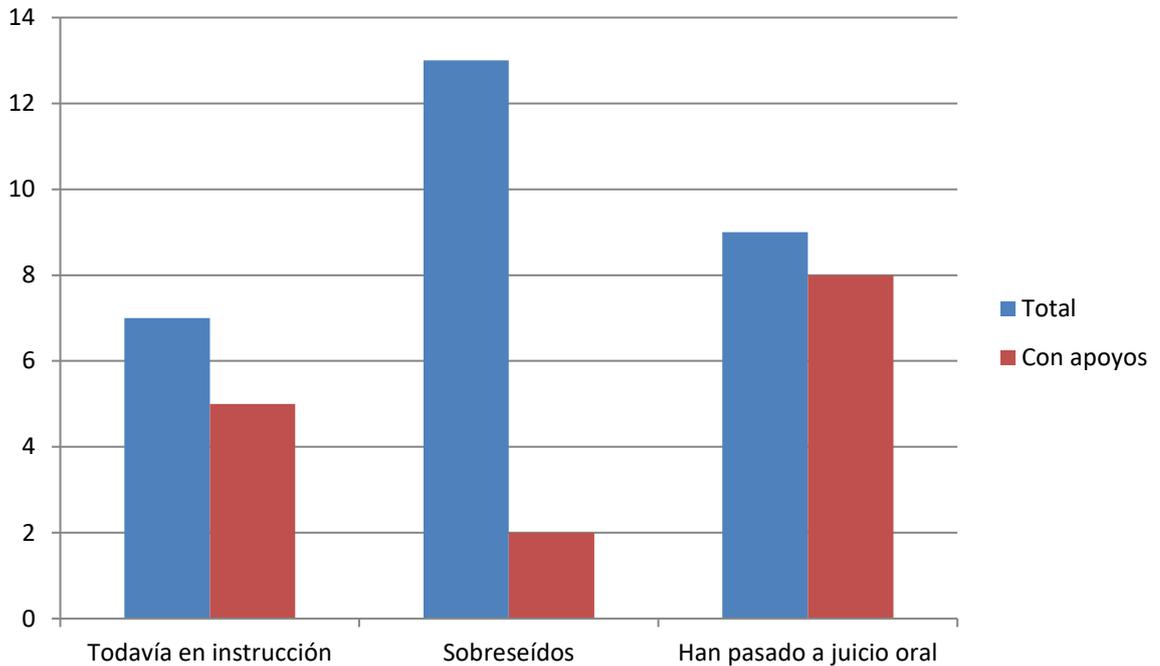


Figure 11

Once we had established the total number of cases (9) now available for the analysis of this phase, we proceeded to examine how often the court accepted preconstituted evidence in the form of a reproduction, thereby precluding the need for the victim with intellectual disability to be present at the trial—and preventing their revictimization, as well. Looking back at Figure 9, we remember that, of the original 29 cases, there were only 7 instances in the pre-trial phase where recording of the victim’s statement was allowed. The progression and current status of these 7 cases is shown in Figure 12 below:

Situación procesal de los casos con preconstituida

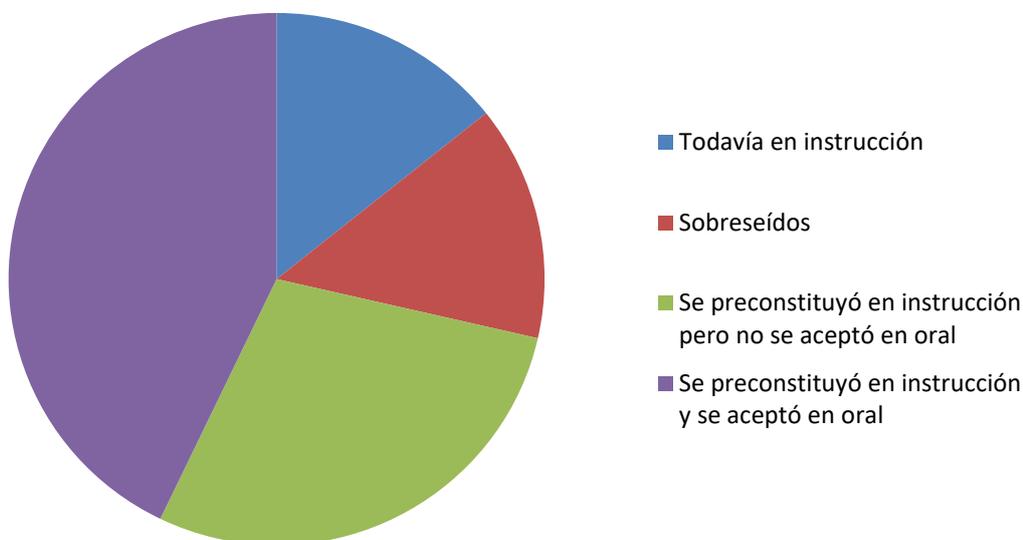


Figure 12

Note that, of the 7 cases where the victim's statement had been preconstituted in the pre-trial phase, 1 of them was still in that phase; 1 had been closed; in 2 cases this evidence was not accepted in the trial; and in 3 cases it was accepted. Thus, of the total of 9 cases that had gone to trial, it was possible to keep victims from having to appear in 3 instances (33.33%) because an audiovisual recording of their statement had been made beforehand, and this reproduction had been accepted; in the other 6 cases, however, the victim had to appear to make a statement.

Another important piece of information relative to these 6 victims (on whom the rest of the analysis will be based) is the time that had passed between the victim's statement in the courtroom in the pre-trial phase and the trial date. It was inferred from the results that the shortest time elapsed between the two appearances was 10 months, while the longest was more than 2-1/2 years (1,095 days). In those 6 cases, the mean number of days that had passed between the two statements was 546.66 (18 months).

The following variables are thought to be the most important factors with reference to the barriers that victims with intellectual disability have to overcome in this phase, and for this reason, they are analyzed below: whether victims were assisted by a professional or expert in giving their statement; whether the questions were adapted to their ability and comprehension; and whether the victim had been shielded from eye contact with the accused during the trial.

As for whether a professional or specialist was permitted to assist and accompany the victim for support with the communication process when giving his/her statement, such support was allowed in 4 of the 6 cases (66.66%), while in the 2 remaining cases, the persons with intellectual disability had to give their testimony alone.

¿Se adaptaron las preguntas a la capacidad de la víctima?

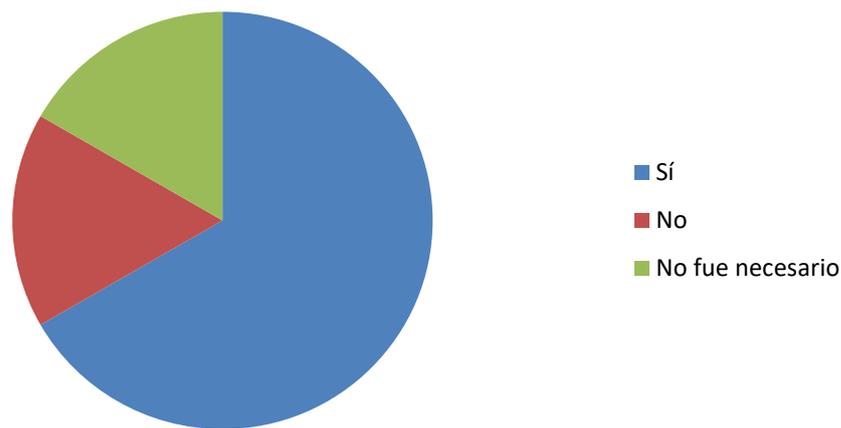


Figure 13

Figure 13, on the other hand, shows the data on whether the questions asked, both by the court and by the parties, were adapted for the victim's communication skills, with the following results: in 4 of the 6 cases, they were adapted; in 1 case, they were not (questions were at the same level and of the same construction as those that would be put to the general population); and in 1 case, adaptation was not required because the professional assisting the victim was permitted to conduct the interview himself, and he adapted the questions the parties had given him beforehand.

Lastly, we looked at the number of cases where the victim had been shielded from eye contact with the accused during the trial. As shown in Figure 14, victims were shielded in only half of the instances; in the other 3 cases, the persons with intellectual disability had the accused in view while giving their statement. In 2 of the 3 instances where eye contact was prevented, this support materialized in the form of a folding screen placed between the two; in only 1 case was the victim spared from being present in the courtroom, having been permitted to give his/her statement via videoconference from an adjoining room.

¿Se evitó la confrontación visual entre víctima e inculpado en el juicio?

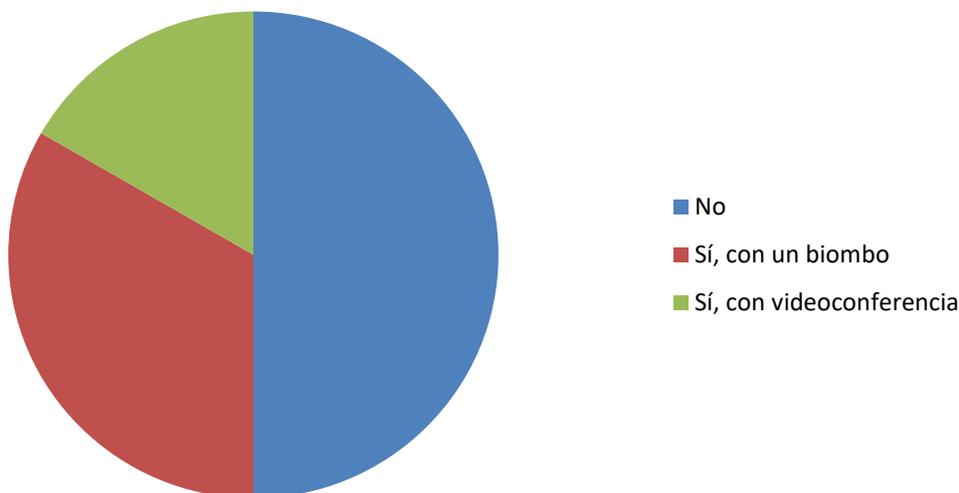


Figure 14

d. Ruling

In this final phase, only two factors thought to be relevant to the barriers that victims face were analyzed—one global, relative to the process as a whole, and the other specific, pertaining to the ruling itself. The first refers to the outcome of the procedure vis-à-vis the supports that were introduced, and the second centers on whether the decision was drafted in a way that was adapted to the recipient's ability to comprehend—a victim with intellectual disability, in this case.

The following graphic (Figure 15) shows the verdict of the 9 rulings in relation to whether supports had been introduced during the procedure to circumvent limitations in the victim's abilities (preconstituted evidence, preliminary explanations, expert assistance, adaptation of the questions, location of the appearances, prevention of eye contact, etc.):

Resultado del proceso con y sin apoyos

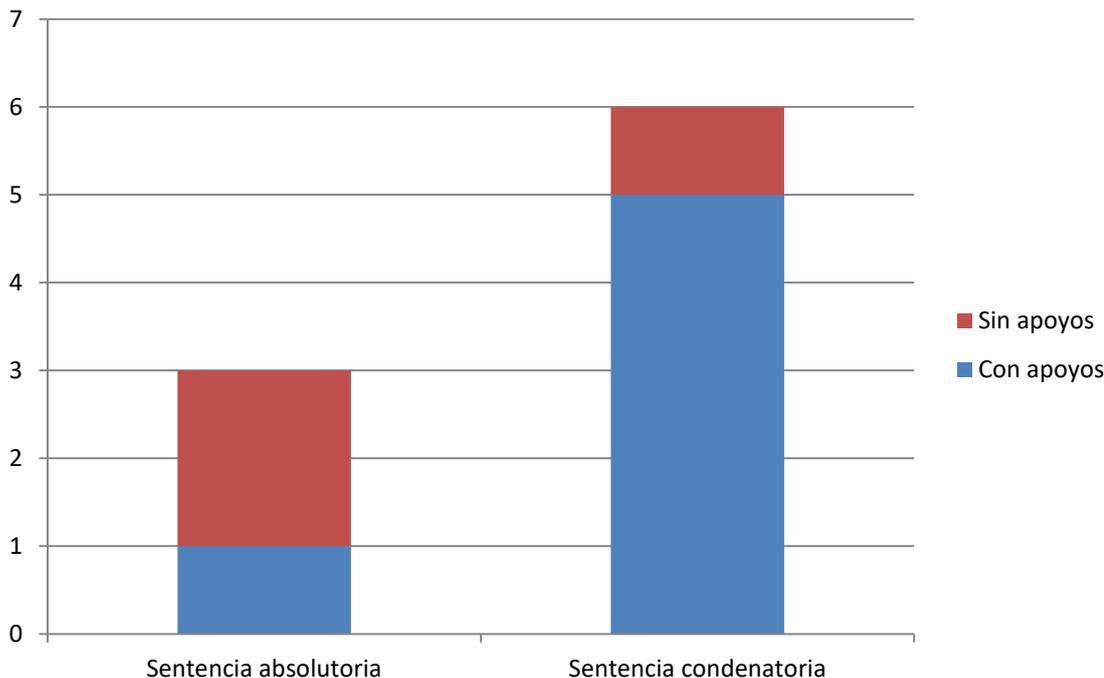


Figure 15

On this graphic, attention should be called to the fact that 6 of the 9 rulings were a guilty verdict—these being the outcome of 5 procedures (or 83.33% of the 6 cases) in which all of the supports or some that were most appropriate for the victim had been implemented, and 1 procedure (16.66%) in which no support had been introduced or the ones that had been implemented were deemed to be insufficient. The other 3 rulings acquitted the accused and were the outcome of 2 procedures with little or no support and 1 procedure with all or some supports.

With regard to the text of the ruling being adapted to the communication skills of victims with intellectual disability, it is important to highlight that, among the 9 cases, not even one instance of this type of support was found. In none of these cases was there either an adaptation of the decision text or an explanation appended to the ruling that summarized its content, making it understandable for the recipient.

V. CONCLUSIONS

From the 29 cases analyzed, a significant evidence base was compiled that the plaintiffs and/or injured parties had been victims of some type of violence or abuse, this evidence being both physical and psychological and including the direct testimony of the those affected. In addition, as victims of abuse or mistreatment, they all sought or had sought therapy at public or private centers. These were persons with intellectual disability of every sort and to varying degrees, both minors and adults, who had found themselves participating in a judicial procedure where there was not always adherence to principles of equality and non-discrimination, or respect for their right of access to justice and effective protection under the law.

First of all, with the moments just prior to filing the complaint in mind, and as we have seen already, even when victims are adults, they are often not even capable of deciding whether to file a complaint—and not only does this complaint relate to a situation they alone have directly suffered, but also it will be these persons with intellectual disability who must tackle the process themselves, with all the difficulties and consequences that may ensue for them. Moreover, seldom are victims offered an explanation of the process that will be set in motion after the complaint is filed and the role they will have in it. This explanation would be important, not only to make available all the information needed for a decision about the complaint—a step that is eliminated, in many instances, as already shown—but also for the simple purpose of informing victims about what is going to happen to them, something that would be a tremendous help in mitigating revictimization because there would be less anxiety aroused in the individual about facing the unknown. On the other hand, data for the number of individuals who question victims prior to the complaint being filed, and for the time that passes between the disclosure and the complaint being filed reveals that there is much disinformation about the interventions most recommended. After a person with intellectual disability discloses that he/she is the victim of a crime, it is recommended that fewer questions be asked, fewer individuals intervene, and that less time would pass, which is much better for the quality of the victim's testimony and to prevent secondary victimization.

In the context of filing the complaint, one of the major barriers identified was the widespread lack of training given to law enforcement agencies in Spain on attending to and interviewing victims who are vulnerable and, more specifically, victims with intellectual disability. While it is true that much progress is being made in terms of training for police forces, the experience of the investigators who conducted this study has revealed that there is still much to do in this regard. A lack of training sometimes means that statements are taken in a setting that is hostile to the victim—without the presence and/or support of a professional or reference person who could assist the victim with

his/her statement (with the dual objective of reducing the victim's anxiety and helping with communications)—and that questions are formulated inappropriately, that is, without adapting them to the victim's level of comprehension.

In the pre-trial phase, a number of other barriers were seen that the victim with disability had to confront, even prior to being summoned to make a statement. First, the results obtained showed us that victims are seldom given an adapted explanation of the procedure—not even after the procedure has been initiated—or of their rights and role in it. There are also constant and considerable delays, often unjustifiable, in the time frames for pre-trial and other proceedings associated with exercise of the victims' rights (assignment of a public defender, examinations by experts, resolution of the remedy of reconsideration). To be specific, the time elapsed between the complaint being filed and the first time the victim was summoned to make a statement at the courthouse was 2-3 months, typically, but periods of up to 14 months were documented and, in more than 40% of the cases analyzed, this interval exceeded 6 months. This means a direct and rather negative impact on the quality of the victim's testimony and the quantity of detail it contains, for the longer the interval between one procedural moment and another, the more impaired the individual's memory and recall ability will be. On the other hand, when victims appeared in court to make a statement regarding the events reported, quite often there were situations where the victim's disability was not taken into account as a factor making him/her more vulnerable to their intervention. Thus, it was not uncommon for the victim's statement to be taken without preconstituting the evidence, without the assistance or support of professionals or experts, without questions being adapted to his/her level of comprehension, and/or in a setting, such as a courtroom, that was inordinately solemn and hostile. With regard to this last item, it is important to bear in mind that there is a direct correlation between the results shown in the previous section and the fact that almost all the victims whose cases were analyzed were receiving assistance from the Victims With Intellectual Disability Support Unit; thus, these victims were assisted by an attorney who was aware of the implications of intellectual disability and was able to take the appropriate measures, urging the court to implement the adaptations he believed were necessary for the victim to be able to participate properly in the process. We would like to stress that, had there not been legal counsel with this knowledge available, it would not be far-fetched to imagine that the figures would have been even higher for the group of victims for whom no support had been implemented. Lastly, as far as this phase is concerned, it was determined that, as a forensic tool, the CBCA is still used on a routine basis with groups of victims for whom it was not designed, which could mean—and, in fact, often does mean—quite devastating effects and consequences for the process and for the victim.

With regard to the trial, first of all, perhaps one of the most significant findings to highlight would be the correlation between cases that reached this phase, when the supports for victims with intellectual disability had been implemented, and cases that were closed, when this factor had not been addressed or had not been handled properly. Another major barrier, already discussed in the previous paragraph but arising in this phase of the process, also, is the time elapsed before the trial date is set: in the context of this study, there was a mean of 18 months between the victim's statement, in the pre-trial phase, and the trial date, with the ensuing consequences, which have been explained above. Apart from that, virtually the same pattern as in the pre-trial phase is repeated here: it is not easy to provide supports as essential and reasonable for victims with intellectual disability as offering them a preliminary, adapted explanation of the trial and their role in it; reproducing the preconstituted evidence, when appropriate, instead of making the victim repeat the story; taking the victim's statement in the presence of and with the support of professionals or experts; and adapting the questions to the victim's level of comprehension. As novelty, and to finish with this phase, the highly recommended step of shielding the victim from eye contact with the accused should be mentioned; this is also seldom addressed—half of the time, according to our study—and when it is addressed, it is most often through the use of a folding screen instead of the technique of taking the victim's statement via videoconference from another courtroom or office.

Lastly, it would be fitting to comment on the verdicts that resulted from the procedures analyzed. First of all, it was interesting to notice the verdicts vis-à-vis the implementation of supports: every time that there were more or less similar points of departure, in terms of the evidence and indications of abuse/mistreatment, a higher number of convictions was seen in the cases in which procedures had been adapted to the victims' limitations. There was also one rather striking fact: that, in processes where the victim was a person with intellectual disability, not even one of the verdicts had been drafted in a manner adapted to his/her level of comprehension.

As an overall conclusion, we would draw attention to the lack of training and protocols for dealing with victims with intellectual disability, in both law enforcement agencies and the judicial sector in Spain, as well as the lack of legislation to address the special measures and supports recommended for this type of situation. These deficiencies translate directly to a higher risk of revictimization and systematic non-compliance with the Convention on the Rights of Persons with Disability, as well as other international treaties and basic human rights standards—particularly in terms of the right of access to justice and effective protection under the law for persons with intellectual disability.

VI. RECOMMENDATIONS

Based on the results and conclusions presented, set forth below are the key supports and adaptations for victims with intellectual disability that we recommend be included in procedural law to facilitate their access to criminal proceedings and to reduce their risk of suffering the secondary victimization phenomenon.

a. How to overcome the limitations of the victim with intellectual disability prior to filing the complaint?

For the victim with intellectual disability to cope with criminal proceedings and have full guarantees, one of the most important supports is an assessment of the victim's skills. This report is nothing more than an analysis of the limitations that a victim, due to his/her disability, may have when making a statement; it also suggests one or more supports to help the police officers and court officials to overcome these limitations, so that communication with the victim might be as smooth as possible and more precise information rich in details might be obtained. In principle, any professional who is acquainted with the victim, his/her limitations and the supports that would overcome them would be able to write this document. To ensure that the report is of the best quality, however, it is good to have professionals available who are experts on this assessment. The Victims With Intellectual Disability Support Unit—a ground-breaking resource for intervention and support for victims with intellectual disability during criminal proceedings—not only has designed a specific protocol for these situations (the ECAT-DI Protocol) but also has professionals available who are experts in assessing the skills that affect the testimony of persons with intellectual disability. They are also experts in designing the supports that would help overcome the limitations that the victim might have when it comes to narrating an event he/she has experienced.

Implementation of this support is backed by Community regulations and found, specifically, in Article 22 of Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012, which establishes minimum standards for the rights, support, and protection of victims of crime.

b. What supports are appropriate to introduce when the complaint is filed?

In this phase, the primary difficulty is ensuring that the official complaint reflects a good statement of what happened to the victim with intellectual disability, and that the account of the facts is as precise, coherent, and detailed as possible.

Nonetheless, and despite progress that Spain's law enforcement agencies have made in the care of and intervention with victims who are especially vulnerable, factors that make it exceedingly difficult to file a good complaint still exist. There are external factors (perception of hostility and coldness that may emanate from the police premises, involuntary intimidation brought to bear by the officers and/or their uniforms, officers who are not adequately trained in intellectual disability, etc.), as well as factors stemming from the disability itself (communication problems, difficulty situating events in space and time, problems with episodic memory, social desirability and acquiescence phenomena, etc.).

For these reasons, as well as the fact that, in the courtroom, victims with intellectual disability will have to repeat the content of their statement—probably several times—it would be advisable to try to keep victims from having to be present when the complaint is filed. There is a dual objective in this: to prevent the victim's testimony from being contaminated by the repeated recounting of the event, and to try to protect the victim from the effects of revictimization. To circumvent the victim going to the police station, an audiovisual recording could be provided, if there is one, or the statement of a reference witness (the first person to whom it was told) could substitute for the victim's statement. Because it is not uncommon for neither of these two options to be available—and even if they are available, the agent still might request the presence and/or signature of the victims themselves for processing the complaint—it is advisable to provide the skills assessment report and request that the victim be assisted by a facilitator when the statement is taken.

c. What is a facilitator?

The facilitator is a neutral and independent psychology professional who is an expert in intellectual disability and in assessing the cognitive skills that impact the judicial process; he/she assists the person with intellectual disability with communications during the police and judicial processes and provides the supports necessary to ensure a valid and reliable testimony. More specifically, the following would be among the facilitator's primary functions: to give emotional support to victims with intellectual disability, so that they are as calm as possible and the effects of secondary victimization are reduced; to inform victims with intellectual disability about how the criminal justice system works (what a complaint is, who the police officer is, why they have to interview the victim, etc.); to advise the police officers and court officials on the appropriate adaptations that should be made for interviews with the victim with intellectual disability, based on the victim's skills assessment; and to design the supports required for statement-taking (offering to serve as translator in the police interviews and depositions, to reformulate questions and explanations to adapt them to the victim's level of comprehension, etc.).

Although, ideally, the facilitator would fit the profile described in the first lines of the last paragraph (in fact, the Victims With Intellectual Disability Support Unit has several professionals dedicated to this role), on certain occasions—when facilitators are absent or unavailable, when there are major communication problems, for example—the role of facilitator may also be played by someone who is close to the victim, with whom the victim feels safe, and with whom smooth channels of communication have been established.

The facilitator is also designated as one of the key supports for victims with special protection needs, which includes persons with intellectual disability, in Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012, which establishes minimum standards for the rights, support, and protection of victims of crime (Article 23).

d. What are the adaptations recommended for the pre-trial phase?

As with filing the complaint, the primary difficulties the victim with intellectual disability will encounter in the pre-trial phase are court officers who are not properly trained to communicate with the victim; the hostility and coldness of the setting (courtroom); and the lack of support, both physical and emotional, during the collection of evidence in which the victim has to participate (especially in the statement). Moreover, there will be a host of parties who want to ask the victim questions, in one or more sessions—the Pre-trial Judge, the District Attorney, other attorneys, the psychosocial/forensic team—and this will heighten the anxiety for a victim with intellectual disability, thereby increasing the risk of the victim’s testimony being contaminated and of the person with intellectual disability suffering a revictimizing effect.

To prevent all of this, it is highly recommended that the implementation of various supports be requested during this phase. The first and most important is preconstitution of the victim’s statement. This option, covered in Articles 448 and 777.2 of the Criminal Prosecution Act, makes sense because, when victims with intellectual disability make their statement with the event more “fresh” in their memory, the statement’s quality will be preserved; this option also will greatly reduce the revictimization of the person with intellectual disability, for it will be a key step toward keeping the victim from being present at the trial. It is also advisable to urge the pre-trial judge to have the victim’s statement taken in preconstituted evidence format (which does not abolish each party’s right to challenge the opposing party’s evidence) in a room other than the courtroom, and with the facilitator present, who would conduct the interview and ask, in adapted form, the questions the parties wish to put to the victim. This format is endorsed in Article 433 of the Criminal Prosecution Act (for minors only) and in Directive 2012/29/EU of the

European Parliament and the Council of 25 October 2012, which establishes minimum standards for the rights, support, and protection of victims of crime and which, in regulatory terms, finds its counterpart in Spain's Crime Victims Statute Act (currently in draft form with compulsory transposition in November of 2015 as target date).

To provide a basis for the appropriateness of the supports explained above, it would be advisable to attach the skills assessment report, mentioned in paragraph a) of this section, to the document in which these requests are made, as well as the Physician's Technical Opinion, which certifies the victim's intellectual disability.

e. What supports would be necessary to implement in the trial?

In the event that preconstitution of the witness evidence was not possible in the pre-trial phase, or even if it was preconstituted but the trial court did not admit the reproduction of this evidence into the trial, it would be advisable to request that all eye contact with the accused be prevented, from the very moment of entrance into the courthouse, and that the statement be made via videoconference. Preferably, the statement would be taken with the assistance of or through the facilitator, who would ask the victim, in adapted form, all the questions the parties may wish to put to the victim. These supports have as a basis Articles 433 and 448 of the Criminal Prosecution Act and Directive 2012/29/EU, already explained above.

As in the foregoing item, it would be advisable to provide, along with the document requesting that these supports be introduced, both the Physician's Technical Opinion for the victim with intellectual disability and the victim's skills assessment report.